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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

Case No. 19-30088 (DM) (Lead Case)

Chapter 11

(JOINTLY ADMINISTERED)

- ☒ Affects Both Debtors
☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company

**SECURITIES LEAD PLAINTIFF'S
OPPOSITION, REQUEST FOR
CLARIFICATION, AND RESERVATION
OF RIGHTS TO REORGANIZED
DEBTORS' FIRST SECURITIES CLAIMS
OMNIBUS OBJECTION**

Hearing Information:

Date: April 28, 2021
Time: 10:00 a.m. (Pacific Time)
Before: (Telephonic Appearance Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

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1 Public Employees Retirement Association of New Mexico (“**Securities Lead Plaintiff**” or
2 “**PERA**”), the court-appointed lead plaintiff in the securities class action captioned as *In re PG&E*
3 *Corporation Securities Litigation*, Case No. 18-03509 (the “**Securities Litigation**”) pending in the
4 U.S. District Court for the Northern District of California (the “**District Court**”), as lead plaintiff
5 for the proposed class it represents in the Securities Litigation (the “**Class**”) and as a creditor in the
6 chapter 11 bankruptcy cases (the “**Chapter 11 Cases**”) of the above-captioned debtors (as
7 reorganized pursuant to the Plan (as defined below), the “**Reorganized Debtors**”), together with
8 York County on behalf of the County of York Retirement Fund, City of Warren Police and Fire
9 Retirement System, and Mid-Jersey Trucking Industry & Local No. 701 Pension Fund (together
10 with Securities Lead Plaintiff, “**Securities Plaintiffs**”), hereby submit this opposition, request for
11 clarification, and reservation of rights (the “**Opposition**”) to Reorganized Debtors’ First Securities
12 Claims Omnibus Objection (the “**Objection**” or the “**First Omnibus Securities Objection**”) [ECF
13 No. 10411] seeking to expunge the proofs of claim filed by certain past PG&E securities holders
14 who sold their entire positions before October 12, 2017 (the first date on which shareholders are
15 alleged to have been injured by the asserted fraud, the “**First Loss Event**”).

16 The issues identified herein impact multiple stock and bond claimants, and Lead Plaintiff
17 submits it would serve judicial economy and efficiency for them to be addressed through this
18 Opposition rather than *seriatim*.¹

19 **BACKGROUND**

20 On January 29, 2019, both PG&E defendants² in the Securities Litigation filed for
21 bankruptcy protection. *See* ECF No. 1. The Court entered an order (the “**Confirmation Order**”)

22
23 ¹ Although Securities Plaintiffs’ claims are not listed in the First Omnibus Securities Objection, Lead
24 Plaintiff, as the court-appointed lead plaintiff in the Securities Litigation representing the putative
25 Class, has fiduciary duties to the stock and bond claimants whose claims are, or in the future may be,
26 objected to on this basis. Accordingly, Securities Plaintiffs submit this Opposition to protect those
27 Class members whose rights and claims may be prejudiced by the First Omnibus Securities Objection.
28 Further, because Lead Plaintiff – like many claimants – sold *some* stock before October 12, 2017 and
also incurred further injury when it purchased additional, still-inflated stock thereafter (*see* Claim
Nos. 69105 & 71345), it has a concrete interest in ensuring that a correct decision is reached on the
legal issues raised by the First Omnibus Securities Objection.

² This Opposition refers to the pre-bankruptcy corporate entities, PG&E Corporation (the publicly
traded holding company) and Pacific Gas & Electric Company (its wholly-owned utility),
collectively as “PG&E.”

1 confirming PG&E's Chapter 11 Plan of Reorganization (the "**Plan**") on June 20, 2020. *See*
2 Confirmation Order, ECF No. 8053; *see also* Plan, ECF No. 8053-1.

3 In their First Omnibus Securities Objection, Reorganized Debtors purport to identify
4 bankruptcy claimants who could not possibly have been harmed by their alleged misconduct.
5 However, because Reorganized Debtors do not describe the underlying allegations, their First
6 Omnibus Securities Objection is ambiguous about the relief it seeks. Securities Plaintiffs
7 respectfully request clarification as described herein, and reserve all rights concerning the extent to
8 which the First Omnibus Securities Objection may be inappropriate as applied to the claims at issue.
9 To pinpoint the ambiguities in the First Omnibus Securities Objection, the conduct at issue in the
10 Securities Litigation must be momentarily acknowledged.

11 PG&E had once assured investors that it was (1) "complying with state and federal
12 regulations," (2) had "doubled" its "vegetation management spending" and "inspect[ed] every
13 segment of" its powerlines "every year," and (3) "implemented" a so-called "protocol" to shut off
14 its power lines during specified "extreme fire danger conditions." Those statements were false. In
15 reality, PG&E committed rampant safety violations throughout the Securities Litigation Class
16 Period, failed to increase its vegetation management spending, had an undisclosed internal policy to
17 inspect certain "high risk" lines just once every five years, and did not have the promised protocol
18 in place for shutting down its grid. Similar statements appeared in PG&E's bond offerings, which
19 were materially false for similar reasons.

20 Thus, when investors paid between \$49 and \$71 for PG&E shares during the Securities
21 Litigation Class Period, they overpaid. Proof that PG&E's actions caused investor losses can be
22 seen in nine discrete events where news emerged about the extent and effects of PG&E's concealed
23 imprudence, and its stock price immediately declined.³ Crucially, many of the misrepresentations at

24 ³ The Reorganized Debtors' First Omnibus Securities Objection refers to these nine events as
25 "Corrective Disclosures," *see* Objection at 2 & 5, which is mostly inaccurate. "Disclosure of the
26 fraud is not a *sine qua non* of loss causation" in the Ninth Circuit. *Mineworkers' Pension Scheme v.*
27 *First Solar Inc.*, 881 F.3d 750, 754 (9th Cir. 2018), *cert denied*, 139 S. Ct. 2741 (2019). Rather,
28 "To prove loss causation, plaintiffs need only show a causal connection between the fraud and the
loss ... by tracing the loss back 'to the very facts about which the defendant lied.'" *Id.* at 753.
Thus, "corrective disclosure" is not the primary theory advanced in the Securities Litigation (though
it fits asserted loss events 4 and 5 quite well). A more accurate collective term for these nine dates

Footnote continued on next page

1 issue were told *after* the First Loss Event, including an attempt to reassure investors that PG&E
2 could not be responsible for any fires because it had “doubled” its “vegetation management
3 spending” (when it had not), had “inspect[ed] every segment of” its powerlines “every year” (when
4 it did not), and so forth. Indeed, approximately half of the allegedly false statements were made
5 after that October 12, 2017 date, and thus, continued to cause investor losses thereafter.

6 Further, certain bond investors need not prove loss causation as an element of their
7 Securities Act claims; rather, as detailed below, their losses are set by statute and are not based on
8 the nine asserted loss events.

9 This background is essential to evaluating Reorganized Debtors’ claim, in the First Omnibus
10 Securities Objection, that they could not possibly have injured certain Securities Claimants.

11 ARGUMENT

12 Reorganized Debtors argue that section 502 of the Bankruptcy Code, Bankruptcy Rule
13 3007(d), Bankruptcy Local Rule 3007-1, and the Court-ordered Claims Procedure and ADR process
14 permit Reorganized Debtors to file this omnibus Objection, seeking entry of an order disallowing
15 and expunging certain proofs of claim for securities sold before the First Loss Event. Objection at 6.
16 However, Reorganized Debtors’ reasoning may assume a controversial interpretation of the
17 securities laws, potentially diverging from the traditional Section 10(b) damages analysis,
18 depending on how this Court applies it. First, they fail to consider that certain securities claimants
19 listed in their Objection are debt-securities claimants, whose debt securities are subject to a different
20 damages analysis set by a statutory formula in the Securities Act of 1933 (the “Securities Act”), and
21 not the events of October 12, 2017 as the Objection assumes. *See* 15 U.S.C. § 77k(e). Second, in the
22 context of Section 10(b) damages for stockholder claims, Reorganized Debtors apparently fail to
23 consider that even stock claimants who sold before the First Loss Event could still be injured by the
24 asserted fraud if they later purchased PG&E securities during the ongoing Class Period.⁴

25
26 _____
27 on which news emerged about the extent and effects of PG&E’s imprudence would be “loss
28 events,” *i.e.*, dates on which the very facts that PG&E misrepresented proximately caused investor
losses. *See id.*

⁴ The Class Period is from April 29, 2015 through November 15, 2018 as defined in the Third
Amended Consolidated Class Action Complaint (the “TAC”). Securities Litigation ECF No. 121.

1 **I. DEBTORS' OMNIBUS OBJECTION CANNOT APPLY TO DEBT-SECURITIES**
2 **CLAIMANTS WHO ARE NOT REQUIRED TO PROVE LOSS CAUSATION**
3 **UNDER SECTION 11**

4 Reorganized Debtors' First Omnibus Securities Objection may not be used to disallow
5 proofs of claim for debt-securities claimants whose claims arise under the Securities Act. Debtors'
6 assertion—that “because [certain securities claimants’] sales occurred before any purported
7 corrective disclosure . . . [their] claim[s] fail[] to establish loss causation”⁵—fails to consider that
8 loss causation is not a required element under Section 11. *See, e.g., In re Violin Memory, Inc. Sec.*
9 *Litig.*, No. 13-05486, 2015 U.S. Dist. LEXIS 57094, at *14 (N.D. Cal. Apr. 30, 2015) (“[L]oss
10 causation is not an element of plaintiffs’ prima facie Section 11 claim . . .”). While aspects of loss
11 causation may create an affirmative defense to a Section 11 claim, the loss events alleged here
12 under Section 10(b) do not apply to the separately pled Section 11 claims, and in any event, this
13 omnibus Objection is not the appropriate vehicle for evaluating affirmative defenses.

14 Reorganized Debtors acknowledge that there are claims other than those under Section
15 10(b), including claims under the Securities Act (and its Section 11 cause of action for certain debt
16 securities), arising out of PG&E’s materially false and misleading statements made in registration
17 statements and other offering documents. *See* Objection at 4 (“This amended complaint . . . asserts
18 claims against the Debtors, among others, under the Securities Act of 1933 . . .”); *see also* TAC at
19 ¶¶496-692; ¶¶693-702 (“This Claim is brought pursuant to §11 of the Securities Act, 15 U.S.C.
20 §77k, on behalf of the Securities Act Subclass, against all Securities Act Defendants”).⁶ Yet,
21 Debtors seek to have claims expunged against not only stock claimants but also debt-securities
22 claimants, even though the latter may be covered by Section 11 and subject to a different damages
23 analysis than Section 10(b) claims – indeed, one set by statute and not based on the events of
24 October 12, 2017. *See* 15 U.S.C. § 77k(e) (providing that an investor may “recover such damages
25 as shall represent the difference between the amount paid for the security . . . and the value thereof
26 as of the time the suit was brought or [] the price at which such security shall have been disposed of
in the market before suit . . .”).

27 ⁵ *See* Objection at 7.

28 ⁶ The bond claims alleged to qualify for Securities Act damages have the following CUSIPs:
694308HY6, 694308HW0, 694308HR1, 694308HS9, and 694308HP5.

1 Securities Plaintiffs have not undertaken a comprehensive review of all the claims
2 Reorganized Debtors include in the First Omnibus Securities Objection. Because Reorganized
3 Debtors might file subsequent omnibus objections on the same ground, it is not practicable for
4 Securities Plaintiffs to police all present and future filings. Nevertheless, Securities Plaintiffs have
5 identified at least seventeen claimants listed in Debtors' Omnibus Objection whose debt-securities
6 claims have distinct losses governed by the Securities Act.⁷ These claims, together with all other
7 debt-securities claimants with claims arising under the Securities Act, are not objectionable on an
8 omnibus basis and should not be expunged. The fact that any such claimant sold its Securities Act-
9 covered debt securities before the First Loss Event is irrelevant because such debt-securities
10 claimants need not establish loss causation as an element of their claims. Further, their damages are
11 set by statute and are unaffected by the events of October 12, 2017. They remain entitled to
12 "recover such damages as shall represent the difference between the amount paid for the security . .
13 . and the value thereof as of the time the suit was brought or [] the price at which such security shall
14 have been disposed of in the market before suit." *See* 15 U.S.C. § 77k(e).

15 Accordingly, Securities Plaintiffs seek clarification and reassurance that the claims of any
16 debt-securities claimant whose claim arises under the Securities Act will not be disallowed or
17 expunged, and respectfully submit that the Court should overrule Reorganized Debtors' First
18 Omnibus Securities Objection to the extent it requests such a windfall.

21 ⁷ *E.g.*, City of Avon Park Firefighters' Retirement System [Claim No. 99048]; City of Deltona
22 Firefighters' Pension Plan [Claim No. 99074]; DRRT FBO Deka Investment GMBH (11202)
23 [Claim No. 101111]; DRRT FBO SWISS REINSURANCE COMPANY LTD(ZF2A9F) [Claim
24 No. 99688]; DRRT FBO WARBURG INVEST AG [Claim No. 100429]; Government Employees'
25 Retirement System of the Virgin Islands [Claim No. 100027]; HealthSpring of Tennessee, Inc.
26 OBO HSPTN [Claim No. 103060]; Houston Municipal Employees Pension System [Claim No.
27 99142]; IFIT Core Fixed Income Fund of Invesco Fixed Income Trust [Claim No. 101792]; Invesco
28 Bond Fund (Delaware Statutory Trust) [Claim No. 102050]; Invesco Core Plus Bond Fund of AIM
Counselor Series Trust (Invesco Counselor Series Trust) [Claim No. 102122]; Invesco Corporate
Bond of AIM Investment Securities Funds (Invesco Investment Securities Funds) [Claim No.
102053]; Invesco Intermediate Bond Factor Fund of AIM Investment Securities Funds (Invesco
Investment Securities Funds) [Claim No. 101438]; Invesco Intermediate Bond Trust of Institutional
Retirement Trust [Claim No. 101678]; Invesco V.I. Core Plus Bond Fund of AIM Variable
Insurance Funds (Invesco Variable Insurance Funds) [Claim No. 101924]; PineBridge Strategic
Bond Fund Emg [Claim No. 101256]; Police & Fire Retirement System of the City of Detroit
[Claim No. 100409].

1 **II. THE FIRST OMNIBUS SECURITIES OBJECTION SHOULD NOT APPLY TO**
2 **ANY SECURITIES CLAIMANT THAT PURCHASED SHARES LATER DURING**
3 **THE CLASS PERIOD**

4 Reorganized Debtors contend that all securities claimants “who sold their PG&E securities
5 before October 12, 2017 . . . could not have suffered a loss caused by the Debtors’ alleged
6 misstatements.” Objection at 3. This contention is ambiguous about how claimants who sold their
7 PG&E securities before October 12, 2017 but then later purchased additional PG&E securities are
8 to be treated. To the extent Reorganized Debtors intend for such later-acquired claims to expunged
9 as well, that request is grounded in a misunderstanding of the securities laws – wrongly supposing
10 that claimants can never establish loss causation if they liquidated their entire position prior to the
11 first event where investors incurred losses.⁸ See Objection at 7-9. The First Omnibus Securities
12 Objection does not explicitly recognize that even securities claimants who sold before the First Loss
13 Event will still have viable Section 10(b) claims if they purchased securities later in the Class
14 Period (or if they retained some shares), precisely because materially false and misleading
15 statements continued to be made.

16 Reorganized Debtors concede that Securities Lead Plaintiff’s Third Amended Complaint
17 pled nine separate loss events. See Objection at 5 & Exhibit 2. Yet, Debtors apparently suggest that
18 securities claimants can only show harm if they incurred loss from the First Loss Event. See
19 Objection at 9 (“[B]ecause each of the claimants identified in Exhibit 1 entirely liquidated their
20 Entire Position in PG&E securities prior to the first purported ‘corrective disclosure’ on October 12,
21 2017, none of them can establish that purported misrepresentations and omissions by the Debtors
22 caused any loss at all.”).

23 Tellingly, Debtors’ authority does not (and cannot) dispute that investors have a cognizable
24 claim if they purchased the PG&E equity securities after the first loss event and suffered injury
25 from any of the subsequent loss events. See, e.g., *Hurst v. Enphase Energy, Inc.*, No. 20-cv-04036-

26 ⁸ The bar for establishing loss causation in the Ninth Circuit is low. Recent circuit law recognizes
27 that the loss causation inquiry “requires no more than the familiar test for proximate cause.” See
28 *Mineworkers’ Pension Scheme*, 881 F.3d at 753. Further, this Circuit has explicitly stated that
disclosure of fraud is not necessary to establish loss causation. *Id.* (“Disclosure of the fraud is not a
sine qua non of loss causation, which may be shown even where the alleged fraud is not necessarily
revealed prior to the economic loss.”). Rather, loss causation is a “context-dependent inquiry as
there are an infinite variety of ways for a tort to cause a loss.” *Id.* (internal quotations omitted).

1 BLF, 2020 WL 7025085, at *8 (N.D. Cal. Nov. 30, 2020) (finding that investors would not have
2 suffered an injury from the fraud because they sold the stock before **the sole loss event** alleged in
3 the complaint); *Vinh Nguyen v. Radiant Pharms. Corp.*, No. 11-00406, 2014 WL 1802293, at *6
4 (C.D. Cal. May 6, 2014) (“[P]ost *Dura* authority has not interpreted the case to bar in-and-out
5 traders from all securities fraud class actions. Rather, circuit courts look to *Dura* for the proposition
6 that inand-out [sic] traders must be able to provide the requisite showing of proximate cause that is
7 necessary for the stage of the proceedings.”).⁹

8 Any argument otherwise would inexplicably condition recovery to harm associated with the
9 first loss event, despite well-pled allegations of subsequent material misrepresentations that caused
10 injury through ensuing loss-related events. The Ninth Circuit has repeatedly held that even after
11 initial negative news causes investor losses, false or misleading statements made to reassure
12 investors can continue to give rise to liability. *E.g.*, *In re Quality Systems, Inc. Securities Litigation*,
13 865 F.3d 1130, 1144 (9th Cir. 2017) (affirming liability for continued investor losses after an initial
14 May 7, 2012 loss event, where subsequent actionable statements falsely “reassured [investors] that
15 the pipeline was full and growing,” causing further losses during a July 26, 2012 loss event);
16 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 958 (9th Cir. 1996) (where a defendant company made “a
17 series of statements to reassure the market” after the first “downward slide in [its] stock price,” a
18 Rule 10b-5 claim was adequately pleaded). As a reminder, Reorganized Debtors incorporated many
19 of the subsequent loss event dates into their “Claim Share” conversion rates. *See* Plan § 1.108
20 (defining “HoldCo Rescission or Damage Claim Share”).

21 Accordingly, Securities Plaintiffs (i) seek clarity that Reorganized Debtors’ omnibus
22 objections may not be used to disallow or expunge claims associated with securities claimants who
23 later purchased securities during the Class Period, and (ii) oppose the First Omnibus Securities
24 Objection to the extent it seeks to expunge claims on the basis of this erroneous view of loss
25 causation under the securities laws.

26 ⁹ The only other authority Reorganized Debtors cite, *In re Cornerstone Propane Partners, L.P. Sec.*
27 *Litig.*, No. 03-2522, 2006 WL 1180267 (N.D. Cal. May 3, 2006), is distinguishable because there,
28 the court merely held that plaintiffs who sold entirely before the first loss event should be excluded
and did not determine whether plaintiffs who subsequently purchased shares should be excluded as
well.

1 **CONCLUSION**

2 For all the foregoing reasons, Securities Plaintiffs respectfully request that this Court enter
3 an Order denying Debtors' First Omnibus Securities Objection to the extent it lists any (1) debt-
4 securities claims asserted under the Securities Act or (2) securities claimants who purchased
5 securities after October 12, 2017. Alternatively, Securities Plaintiffs seek clarification that
6 Reorganized Debtors do not, and will not, seek to object to or expunge such claims.

7
8 Dated: April 14, 2021

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